



# ARIZONA

## REAL ESTATE BULLETIN

Arizona Department of Real Estate • Vol XXVII, No. 5

[www.re.state.az.us](http://www.re.state.az.us)

April  
2002

## Mandatory continuing education to include disclosure classes beginning July 1

Applicants for renewal of an Arizona Real Estate License on or after July 1, 2002, must have attended a new three-hour continuing education course on disclosure. The classes will be available at most if not all approved Arizona real estate schools. Arizona will be the first state to make such a requirement of its real estate licensees.

The number of hours of continuing education required for license renewal will remain the same, 24. Renewal applicants will be required to attend three classroom hours in the subjects of Agency Law, Contract Law, Commissioner's Standards, Real Estate Legal Issues, Fair Housing, and now, Disclosure. The remaining six hours may be in any of these subjects or "general" real estate courses.

"Disclosure of all sorts of information about real property offered for

sale is becoming an increasingly complex matter," said Real Estate Commissioner Jerry Holt. "According to legal experts, 70 to 80 percent of all real estate law suits are filed by buyers, and nearly all of these suits address disclosure matters. This is just one reason that the Arizona Department of Real Estate recognizes the need for more complete continuing education in the area of disclosure. As a result, we are requiring all approved real estate instructors who teach courses which include significant disclosure content to attend an Instructor Development Workshop.

"We believe that for the protection of the public it is imperative that real estate licensees receive the most up-to-date continuing education to keep them apprised of vital disclosure issues, and that education can come only from instructors who have been

thoroughly prepared to teach the subject."

The Workshops were designed with the assistance of several real estate attorneys, Arizona real estate instructors and the Arizona Real Estate Educators Association. According to Edwin Ricketts, president of the Association, the workshops will be as thorough as possible. "For instance, each instructor who attends a Workshop will receive 260 pages of disclosure-related materials," Ricketts said.

The Department's authority to require the course is contained in Commissioner's Rule A.A.C. R4-28-402(A)(2) which states, "The Department may require an individual applying for renewal to obtain credit hours based upon significant current issues in the real estate community."

## ADRE proposes rule changes

The Department is proposing several changes to the Commissioner's Rules contained in the Arizona Administrative Code, Title 4, Chapter 8.

Two definitions are added for clarity. Grammar, style and formatting changes are made to existing rules. New rules describe a licensee's standard of care and disclosures that may be required.

A new section provides guidance as to a broker's "reasonable supervision" of licensees and others under his employ. Based on statutory requirements found throughout Title 32, Chapter 20, A.R.S., the rule distills the various areas a broker must address to demonstrate that the broker is fulfilling the broker's statutory obligation to supervise licensees and unlicensed employees.

The Department solicits your com-

ments about these proposed changes. You may send them in writing to Cindy Wilkinson, Policy Officer, ADRE, 2910 N. 44th Street, Suite 100, Phoenix AZ 85018. You may also send email to [cwilkinson@re.state.az.us](mailto:cwilkinson@re.state.az.us)

A public hearing on the proposed changes will be held on Thursday, May 30, beginning at 10 a.m. in the Department's first-floor conference room at the address above.

The proposed changes are:

Article 1. Definitions

R4-28-101. Definitions

In addition to the definitions listed in A.R.S. § 32-2101 the following terms apply to this Chapter:

1. through 2. No change.

*Continued on page 13*

## Real estate legislation sent to Governor

Three bills which will effect changes in real estate statutes were on their way to Governor Hull for her signature as this issue of the *Arizona Real Estate Bulletin* went to press. A fourth, House Bill 2008 was expected to be sent to the Governor within a few days. The following is a brief summary of the legislation:

House Bill 2005:

- Amends A.R.S. § 32-2181.02(B)(2) to clarify that prior public reports used with subsequent owner exemptions may be no more than two years old.

*Continued on page 19*

# The real estate broker's duty to give competent legal advice

by Dan Klobberdanz

Reprinted with permission from the March 2002 issue of the Arizona Journal of Real Estate & Business

This article will explore the responsibility of a real estate broker to give competent legal advice to the parties in a transaction. The broker may have accountability for failing to give proper legal advice to a party, either by giving bad advice or by failing to mention something which would have protected the party. Similarly, if a broker is preparing documentation such as a purchase contract, the broker may have certain duties to assure that such contract is drafted appropriately. The question often arises, just exactly what are these duties and to whom do these duties run?

## The Arizona Constitution

As a starting point, under the Arizona Constitution, real estate brokers and salespersons are granted the right to draft documents incident to the sale or lease of real property, where the broker or salesperson is acting in the agent's capacity as a real estate licensee. Arizona Constitution Article 26, section 1. Therefore, real estate brokers practicing in Arizona are given much broader rights to "practice law" than brokers in most other states. Along with such rights, however, is the broker's obligation to give competent legal advice to clients in relation to such documents.

## Arizona case law

As explained below, three important Arizona court cases define the broker's obligation to give legal advice in a real estate transaction. Essentially, these decisions establish the rule that a broker does have the duty to give competent legal advice, but such duty runs only to the broker's client.

In the first court decision addressing this issue, the court found the broker liable to his client. In *Morley v. J. Pagel Realty & Insurance*, 27 Ariz.App. 62, 550 P.2d 1104 (1976), Division Two of the Arizona Court of Appeals held a real estate broker was liable for failing to advise his clients (who were the sellers) of the consequences of accepting an unsecured carryback promissory note. The court

held the broker bears the responsibility to explain "the implications" of all documents the broker has the right to prepare by virtue of the Arizona Constitution. The court attempted to limit its holding by declining to require that real estate brokers must discuss with their clients the merits of all available security devices. Rather, the court held the broker at least owed the duty to give the "banal advice" of warning the clients they should require some form of security. Essentially, the court held the broker fell below the required standard of care in this particular transaction.

In 1979, the Arizona Supreme Court clarified the real estate broker's duty to give legal advice to a non-client. *Buffington V. Haas*, 124 Ariz. 36, 501 P.2d 1320 (1979). The court held, absent an agency relationship between the broker and the party, a broker has no obligation to inform the seller she should obtain a security interest for a promissory note carried by the seller as part of the purchase price. The court also held a real estate broker has no duty to explain the contents of the escrow instructions to a non-client, and noted that with respect to the broker's duty to a party, the "crucial factor" was whether an agency relationship existed between the broker and such party. Specifically, in this case, the court found the selling broker, who never met the seller, did not act as the seller's agent even though the seller paid him a real estate commission.

In the third important decision regarding a real estate broker's duty to give competent legal advice, Division One of the Arizona Court of Appeals applied to purchasers the same non-client limitation set forth in the *Buffington* decision. *Haldiman, v. Gosnell Development Corp.*, 155 Ariz. 585, 748 P.2d 1209 (App. 1987). In *Haldiman*, the potential purchaser of a new home lost her \$2,000 earnest money deposit, and a \$1,300 deposit for new home options after she failed to obtain new financing because she was unable to sell her former home. The purchaser sued Gosnell Development and its real estate agent for breach of the duty of full and frank disclosure. The court held Gosnell and its agent did not represent the purchaser and thus owed no duty to

explain the terms of the purchase contract to her, nor to suggest that the contract should be contingent upon financing. The court specifically rejected the purchasers argument that the earlier *Morley* opinion could be interpreted to create duties of real estate brokers to persons other than the broker's clients.

## When the broker gives bad advice to a non-client

Whereas the law is clear in Arizona a broker owes no duty to a non-client to give legal advice, the situation is different if, the broker actually undertakes to give legal advice, and such advice is provided in a negligent or otherwise wrongful manner.

As a general rule, a broker may be held liable for negligent misrepresentation to a buyer or seller, even though the broker does not represent that party. *Mammas v. Oro Valley Townhouses, Inc.*, 131 Ariz. 121, 638 P.2d 1367 (App. 1981) (Listing broker and seller may be liable for negligent misrepresentation of home's square footage); *Roy H. Long Realty Co. v. Vanderkolk* 26 Ariz.App. 226, 547 P.2d 497 (1976) (Property owners, who listed their property with a broker, were successful in their negligent misrepresentation claim against their broker regarding receipt of an earnest money deposit). In Arizona, the ultimate test as to whether a real estate broker may be held liable for negligently making a misrepresentation to a buyer or seller is whether that broker knows or reasonably should know the statement is false. The "reasonably should know" standard is often a factual issue, and may be proved by testimony from expert witnesses.

With respect to a broker's misrepresentation of a legal matter to a non-client, the law is not so clear when an action may arise. First, as a general rule, absent a fiduciary relationship, misrepresentation must be one of a past or existing fact, rather than a statement of opinion. More specifically, and again setting aside one's fiduciary duties to a client, the general rule is that a misrepresentation of law or of the legal effect of a contract does not constitute actionable fraud. See *Apolito v. Johnson*, 3 Ariz.App.

*Continued on page 14*



Jerry Holt

# News From The Commissioner

A broker's responsibility to supervise licensed employees is currently described in a statute and a rule. A.R.S. § 32-2153(A)(21) requires a broker to "exercise reasonable supervision over the activities of salespersons, associate brokers or others under the broker's employ...."

Commissioner's Rule R4-28-302(I)(2) states that an employing broker "shall be responsible for supervising the associate brokers, salespersons and employees of the employing broker within the course of their employment."

Neither the statute nor the rule state what constitutes "reasonable supervision," and we feel that is not a good situation. Brokers, especially new brokers, have the right to know how the Department expects them to supervise employees. For that reason, we are proposing a new Commissioner's Rule, R4-28-1103, "Broker Supervision and Control," which we feel goes a long way to clarify a broker's supervisory responsibilities.

The proposed rule defines "reasonable supervision and control" to include, as appropriate, the establishment and enforcement of written policies, rules, procedures and systems to review, oversee, inspect and manage:

1. Transactions requiring a real estate license.
2. Documents that may have a material effect upon the rights or obligations of a party to the transaction.
3. Filing, storage and maintenance of such documents.
4. The handling of trust funds.
5. Advertising and marketing by the broker and the broker's agents.
6. Familiarizing salespersons and associate brokers with the re-

quirements of federal and state laws relating to the practice of real estate.

7. The use of employment agreements, disclosure forms and contracts.
  8. The delegation of authority to others to act on behalf of the broker.
  9. The use of unlicensed assistants by the agents of the broker.
- B. A broker shall establish a system for monitoring compliance with the broker's policies, rules, procedures and systems. A broker may use the services of employees to assist in administering the provisions of this section but shall not relinquish overall responsibility for supervision and control of the acts of employees of the broker.

Other proposed rule changes described in the story on page 1 would clarify existing rules and make needed grammatical changes.

We invite you to send your comments about the proposed changes to Cindy Wilkinson, Policy Officer, ADRE, 2910 N 44th Street, Suite 100, Phoenix AZ 85018. A public hearing on the proposed changes will be held at the Department's Phoenix office at 10 a.m. on May 30. You are welcome to attend.

## Disclosure

Our decision to require three hours of continuing education for license renewal on the subject of disclosure has a double purpose. We want to help keep Arizona real estate licensees out of court, and we want to protect the public by educating licensees about proper disclosure, an increasingly complex part of the real estate transaction.

We are deeply indebted to the IDW Workshop Committee whose members, real estate attorneys and members of the Arizona Real Estate Educators As-

sociation, designed the Instructor Development Workshops and created the Buyer Advisory described in the story on page 1.

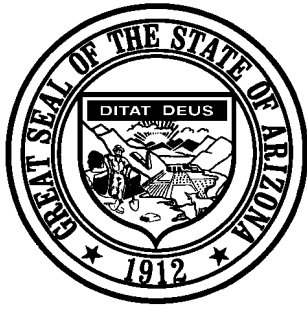
The Buyer Advisory is not intended to diminish the responsibility of licensees to deal fairly, competently and honestly (make material disclosures) to all parties to a transaction. Nor should the Buyer Advisory be viewed as a means for agents to shift their responsibilities to their clients. Obviously, agents need to communicate effectively with their clients and continue to be responsible for assisting and advising their clients throughout the real estate transaction.

The Buyer Advisory should be considered to be in the "public domain." There is nothing magic or sacrosanct about its content or organization. It is a living document. Real estate licensees should feel free to customize it to their particular practice. Brokers may wish to do likewise, for their practice and location in the state. You may wish to add topics to it.

## Legislation

As reported in the story on page 1, three bills introduced in the Legislature which affect the Department -- those addressing licensing, subdivisions and the continuation of the Department for another 10 years -- have been sent to the Governor for her signature. A fourth bill, which would amend recovery fund statutes, is expected to go to the Governor very soon.

We are deeply indebted to Roy Tanney, our Subdivisions Division Director and Legislative Liaison, for his hard work in getting these bills through the Legislature. It was a tough job considering the Legislature's problems with the budget and other matters. Great job, Roy!



## ARIZONA REAL ESTATE BULLETIN

An official publication of the  
State of Arizona  
Department of Real Estate  
2910 N. 44th Street, Suite 100  
Phoenix, Arizona 85018  
(602) 468-1414  
Fax (602) 468-0562

400 W. Congress, Suite 523  
Tucson, Arizona 85701  
(520) 628-6940  
Fax (520) 628-6941

Jane Dee Hull  
Governor

Jerry Holt  
Commissioner

Charles M. Downs  
Editor  
cdowns@re.state.az.us

REAL ESTATE ADVISORY BOARD  
R.L. Brown, Chairman  
Munds Park  
Richard C. Allen, Vice Chairman  
Phoenix  
Eugene E. Cox, Phoenix  
Vicki L. Cox-Golder, Tucson  
Robert Thomas Flibotte, Payson  
Gary Lee, Yuma  
Paul Lindsey, Tucson  
Mauro Pando, Phoenix  
Vincent Pellerito, Phoenix

© 2002, Arizona Department of Real Estate.  
The Arizona Real Estate Bulletin is published  
six times each year and is available from the  
Department's World Wide Web site at  
[www.re.state.az.us](http://www.re.state.az.us).  
First-class mail subscriptions: \$10 per year.

Articles reprinted from other publications  
do not necessarily reflect the policies of or  
interpretations of the law by  
the Arizona Department of Real Estate.

The Department of Real Estate is an  
Equal Employment Opportunity, Reasonable  
Accommodation Agency.

### Do you know that...

- If you change your home or business address, you must notify the Department within 10 days. A signed letter, mailed (not faxed) to the Department, is sufficient to notify us of a home address change. A change in business address requires the use of LI-201, the License Change Form. You may download it from our web site at [www.re.state.az.us/library.html](http://www.re.state.az.us/library.html)
- You must renew your license on or before the last calendar day of the month in which it was issued. If that day falls on Saturday or Sunday, you may renew on the following Monday. If the following Monday is a holiday, you may renew on the following Tuesday. If you mail your renewal to the Department, it must be postmarked on or before the last calendar day of the month or it will be considered a late renewal and you will have to pay a late penalty.
- A Directory of Licensees available on our web site at [www.re.state.az.us/db.html](http://www.re.state.az.us/db.html) provides information about all active and inactive licensees including license number, license type, expiration date, employer (if active), and employer's business address and telephone number. Home addresses and telephone numbers are not disclosed.  
About 3,600 people use the Directory each month. That represents an average of 180 people each day who do not telephone the Department to obtain the information they require (usually their license expiration date). Since we launched the Directory, the number of visits in January has been 50 percent larger than any other month for two years running. We have no idea why.
- We maintain a mailing list of more than 2,000 people who have asked to be notified of late-breaking Department news by email. To add your name to the list, send your email address to [cdowns@re.state.az.us](mailto:cdowns@re.state.az.us).
- Of the more than 2,000 email addresses on that mailing list, only seven begin with the letter O. We find that strange.
- You may now obtain all 24 hours of continuing education required for license renewal on the Internet. Schools offering renewal courses on the Internet are listed at [www.re.state.az.us/Schools.html](http://www.re.state.az.us/Schools.html)

**The mission of the  
Arizona Department of Real Estate  
is to safeguard and promote the public interest  
through timely and capable assistance,  
fair and balanced regulation,  
and sound and effective education.**

# ADMINISTRATIVE ACTIONS

## Summary Suspensions

**01A-061**

**William B. Marvin**  
**Phoenix**

DATE OF ORDER: December 10, 2001

FINDINGS OF FACT: In August 2001, the Department entered into a Consent Order with Respondent which granted him a two-year provisional real estate salesperson's license. The order stipulated that Respondent completely abstain from the use of illegal drugs, and submit to random body fluid tests.

Respondent was ordered by the Department's Compliance Officer to undergo a body fluid test on November 30, 2001. Because the temperature of the specimen Respondent submitted with outside the test range, Respondent was required to submit to another test on December 3, 2001. Respondent test positive for cocaine metabolite.

DISPOSITION: Finding that Respondent committed acts in violation of A.R.S. §§ 32-2153(A)(3) and (A)(24), under A.R.S. § 32-2157(B) and (C), and the public welfare or safety imperatively requiring emergency action in this matter.

**IT IS ORDERED** that Respondent's real estate salesperson's license is summarily suspended.

Respondent had the right to request an administrative hearing in this matter, but did not do so. Respondent's license will remain suspended until it expires on August 31, 2003.

**01A-052**

**Raul R. Martinez**  
**Scottsdale**

DATE OF ORDER: March 18, 2002

FINDINGS OF FACT: In July 2001, the Department entered into a Consent Order with Respondent which granted him a two-year provisional real estate salesperson's license. The order stipulated that Respondent completely abstain from the use of illegal drugs and submit to random body fluid tests.

Respondent was ordered by the Department's Compliance Officer to undergo a body fluid test on February 26, 2002. Respondent tested positive for amphetamine and methamphetamine.

DISPOSITION: Finding that Respondent has committed acts in violation of A.R.S. §§ 32-2153(A)(3), (A)(24) and (B)(9), and the public health, safety or welfare imperatively requires emergency action under A.R.S. § 32-2157(B) to suspend Respondent's real estate salesperson's license.

**IT IS ORDERED** that the real estate salesperson's license of Respondent Raul R. Martinez is hereby summarily suspended.

Respondent may request an administrative hearing to contest this Summary Suspension Order by filing a Notice of Appeal within 30 days.

## Revocations

**01A/042**

**Mark D. Boring aka Damon Marcus**  
**Sedona**

DATE OF ORDER: February 14, 2002

FINDINGS OF FACT: Respondent was licensed as a real estate salesperson. In January 2001, Respondent informed the Department that he had been convicted of disorderly conduct with a weapon, a felony, in Yavapai County. Respondent is on probation until December 2003. VIOLATIONS: Respondent's felony conviction shows he is not a person of good character in violation of A.R.S. § 32-2153(B)(7). Respondent has violated state law that involves violence against another person, in violation of A.R.S. § 32-2153(B)(10).

The Commissioner cannot renew the license of a person who has been convicted of a felony and is on probation as a result of the conviction. A.R.S. § 32-2130(E).

DISPOSITION: Respondent's real estate license is revoked.

Renewal Applications Denied

**00A-146**

**Sharlene Pollard**  
**Glendale**

DATE OF ORDER: January 25, 2002

FINDINGS OF FACT: In June 2001, Petitioner applied for renewal of her real estate salesperson's license. The Department denied her original application for a license due to a disclosure of a 1992 misdemeanor DUI conviction in Peoria and a 1993 felony DUI conviction in Phoenix.

Upon review, the Department entered into a Consent Order with Petitioner in March 1997 wherein she was issued a conditional real estate salesperson's license. Among the stipulations contained in the Order was an allowance for action against the license should it be demonstrated that Petitioner had failed to comply with any of the conditions stated therein, or that she tested positive for alcohol use.

In October 1999, Petitioner was charged with DUI. She entered a no contest plea and was convicted of misdemeanor DUI on October 13, 2000. Petitioner notified the Department of the conviction within 10 days as required by Commissioner's Rule A.A.C. R4-28-301(F).

Subsequently, in her June 28, 2001 renewal application, Petitioner certified that she had been convicted of a misdemeanor since her initial application.

In his Conclusions of Law, the Administrative Law Judge wrote, "The Department held an administrative hearing in this matter at which Petitioner stipulated to the fact of three convictions.

VIOLATIONS: Petitioner has not demonstrated that she is a person of good character, fit for licensure under this Department. Although affording this applicant every benefit of doubt and apparently overlooking the fact of a previous felony conviction, the Department issued a conditional license in 1997, only to have its trust and beneficence violated and betrayed by

an action of Petitioner that has resulted in a misdemeanor conviction for activity that has received societal opprobrium."

DISPOSITION: License renewal denied.

## Consent Orders

**01A-147**

**David W. Locke**  
**Tucson**

DATE OF ORDER: January 2, 2002

FINDINGS OF FACT: In his application for a real estate salesperson's license, Petitioner disclosed a 1996 theft conviction and a 1991 DUI conviction.

The Department notified Petitioner of its intent to deny his application. Petitioner appealed the denial and an administrative hearing was held. At that hearing, Petitioner represented that the murder of his mother and the loss of a "significant other" led to cocaine addiction. He stole from his employer to support the addiction.

He testified that prior to his arrest he confessed his addiction and the thefts to his employer.

Petitioner voluntarily entered and successfully completed an outpatient drug counseling program. He represented that he is sober and stopped using cocaine on September 1, 1995.

VIOLATIONS: Petitioner was convicted of a crime of theft in violation of A.R.S. § 32-2153(B)(2). As a result, Petitioner has been guilty of conduct that constitutes fraud and dishonest dealings, in violation of A.R.S. § 32-2153(B)(5).

Petitioner's conduct shows he is not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). Petitioner has violated Arizona laws that involve theft and dishonest dealings, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

*Continued on page 6*

*Continued from page 5*

d. Petitioner shall post a surety bond in the amount of \$15,000.

Petitioner shall not have access to or authority over a broker's trust account.

#### 01A-139

**David Domingo Dodge**  
**Mesa**

DATE OF ORDER: January 10, 2001

FINDINGS OF FACT: In his November 2001 application for a real estate salesperson's license, Petitioner disclosed a felony conviction for attempted possession of marijuana for sale.

Petitioner has successfully maintained continuous full-time employment since his conviction. That employment has included random drug testing since 1998.

The incident is 10 years old, and the Department has no reason to believe that Petitioner has had any criminal convictions or any other civil or administrative judgments entered against him since the 1991 conviction.

VIOLATIONS: Petitioner has been convicted in Arizona of a felony in violation of A.R.S. § 32-2153(B)(2). Petitioner's behavior that led up to the 1991 conviction did not demonstrate honesty, truthfulness and good character, as required in A.R.S. § 32-2153(B)(7).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status:

a. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

#### 01A-137

**Cesar D. Cuevas**  
**Surprise**

DATE OF ORDER: January 10, 2002

FINDINGS OF FACT: In his application for a real estate salesperson's license, Petitioner disclosed a 1994 conviction for grand theft and 1990 convictions for DUI and a minor in possession of alcohol. The Department notified Petitioner of its intention to deny his application. Petitioner filed a notice of appeal.

The incidents referenced above are more than seven years old and the Department has no reason to believe that Cuevas has had any criminal convictions or any other civil or administrative judgments entered against him since the above convictions.

Petitioner has been steadily employed for the past seven years and is a family man with four children.

VIOLATIONS: Petitioner has been convicted of a felony in violation of A.R.S. § 32-2153(B)(2). He failed to demonstrate that he is a person of

honesty, truthfulness and good character in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

Prior to license activation, Petitioner shall post a surety bond in the amount of \$5,000.

#### 01A-153

**Gina M. Anselmi**  
**Anthem**

DATE OF ORDER: January 10, 2002

FINDINGS OF FACT: In her October 2001 application for renewal of her real estate salesperson's license, Petitioner disclosed a July 2001 conviction for DUI.

In February 2000, Petitioner disclosed a February 2000 conviction for DUI.

Petitioner voluntarily attended and continues to attend Alcoholics Anonymous meetings. The Department has no reason to believe Petitioner has had any subsequent criminal convictions or any other civil or administrative judgments entered against her since the conviction listed above.

VIOLATIONS: Petitioner disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3). Petitioner has not shown she is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). Petitioner failed to report her July 2001 DUI conviction within 10 days as required by Commissioner's Rule A.A.C. R4-28-301(F).

DISPOSITION: The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance

Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

d. Prior to issuance of the provisional license, Petitioner shall submit to the Compliance Officer, for pre-approval, the name of a person selected to function as a sobriety monitor.

e. Petitioner shall enter into a contract with the sobriety monitor for her attendance at Alcoholics Anonymous meetings with a minimum attendance of one meeting per week. The sobriety monitor shall be responsible for reporting any breach of the sobriety contract to the Compliance Officer and may be periodically called upon by the Compliance Officer to report on Petitioner's attendance at AA meetings and her behavior or activities.

#### 01A-152

**Aaron John Harris**  
**Phoenix**

DATE OF ORDER: January 14, 2002

FINDINGS OF FACT: In his October 2001 application for a real estate salesperson's license, Petitioner disclosed a 1998 conviction in Iowa for OWI (Operating a Motor Vehicle While Under the Influence of an Alcoholic Beverage or Drug) and a 1999 conviction in Iowa for possession of marijuana.

Petitioner appeared sincerely remorseful, regretted his decisions that resulted in the convictions, and has accepted his responsibility for his actions. He is newly married and is attending the University of Phoenix. The Department has no reason to believe that Petitioner has had any subsequent criminal convictions or any other civil or administrative judgments entered against him since the convictions listed above. VIOLATIONS: Petitioner failed to demonstrate that he is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7).

DISPOSITION: The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice mon-

itor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

#### 01A-093

**James L. Teeter and Mary Ellen Teeter  
Coronado, Calif.**

DATE OF ORDER: January 17, 2002

FINDINGS OF FACT: Respondents do not presently hold and have never held real estate licenses in Arizona. In February 2001, Respondent filed an application for a subdivision public report seeking authorization to sell various lots within the Kingman Air-Rail Manor Subdivision (the Development). The application was incomplete and closed by the Department with no further action taken by Respondents. A public report was not issued.

In March 2001, Respondents, as trustees, sold through a trust account owned solely by Respondents six or more lots or portions of lots in the Development to Crystal K. Mowry.

At the same time, Respondents, as trustees, sold through a trust account owned solely by Respondents six or more lots or portions of lots in the Development to Gene D. Hout and Jane M. Hout.

Upon notification of illegal subdivision lot sales from the Department, Respondents immediately and voluntarily discontinued all lot sales in the Development.

Respondents have been cooperative with the Department in reaching a resolution of this matter. Respondents maintain that they intended at all times to comply with all applicable laws, regulations and rules pertaining to developing and selling lots in the Development, and believed they were in full compliance until receiving notification from the Department.

Respondents have filed a new application for a subdivision public report for the Development which is presently pending and under review by the Department.

VIOLATIONS: Respondents by their actions are a "developer" within the meaning of A.R.S. § 32-2101(21). The Development is a subdivision within the meaning of A.R.S. § 32-2101(54). Each of the Respondents are a "subdivider" within the meaning of A.R.S. § 32-2101(53). The sales by Respondents were not exempt from the public report requirements pursuant to A.R.S. §§ 32-2181.01 or 2181.02.

Respondents sold six or more lots in the Development without obtaining a public report from the Commissioner, and failed to furnish each prospective purchaser with a copy thereof, in violation of A.R.S. § 32-2183(F).

DISPOSITION: Respondents shall cease and desist from selling, offering for sale, or transferring any lots in the Development until Respondents demonstrate compliance in full with this Consent Order and comply with all applicable Arizona laws and rules.

Respondents shall obtain a public report from the Department covering, in part, the referenced lots already sold and any additional future lots in the Development to be sold before

offering lots for sale and selling any lots in the Development.

Respondents shall provide all purchasers of lots in the Development including, without limitation, those purchasers referenced above, with a copy of the Public Report and shall receive a receipt.

Respondents shall offer written notice of rescission to each of the purchasers listed above.

Respondents to pay a civil penalty in the amount of \$1,000. Respondents shall comply with all county and/or city for infrastructure improvements for the Department.

James L. Teeter shall attend nine hours of approved Arizona continuing education classes in the categories of Commissioner's Rules and Real Estate Legal issues, primarily focusing on subdivision law.

#### 01A-101

**Lanny Charles Astgen  
Scottsdale**

DATE OF ORDER: January 22, 2002

FINDINGS OF FACT: In his January 1993 application for a real estate salesperson's license, Respondent failed to disclose:

- a. A criminal information filed against him by the State of Washington in Superior Court in 1990 charging him with a series of takings which were part of a common scheme or plan during 1985-1987;
- b. An Order for Default and Judgment entered against him in March 1989 in the amount of \$8,000.73 plus interest, attorney fees and costs; and
- c. An order and entry of judgment on arbitration award entered against him in July 1990 in the amount of \$35,000.

Respondent was required by Questions 2 and 6 of the Licensure Affidavit of the original application for a real estate salesperson's license to disclose the suit and orders, but failed to do so.

The Criminal Information referenced above was dismissed with prejudice on November 28, 1990. Respondent filed for bankruptcy protection under Chapter 7 and the Discharge Order was entered discharging his debts including the judgments referenced in b. and c. above.

Respondent represented to the Department that he intended to honestly and fully answer all questions on the Licensure Affidavit and did not believe he was required to disclose any of the litigation because of the dismissal of the criminal information with prejudice and the bankruptcy discharge which rendered the civil judgments null and void.

VIOLATIONS: Respondent procured or attempted to procure a license by filing an original application which was false or misleading in violation of A.R.S. § 32-2153(B)(1).

His conduct does not show he is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondents real estate salesperson's license is suspended for 30 days to begin upon entry of this Consent Order. Respondent to pay a civil penalty in the amount of \$1,000. Respondent to attend six hours of approved continuing education classes in the categories of Commissioner's Standards, Agency

Law and Real Estate Legal Issues.

#### 01A-146

**Gregory V. Brasher  
Lake Havasu City**

DATE OF ORDER: January 23, 2002

FINDINGS OF FACT: In his August 2001 application for a real estate salesperson's license, Petitioner disclosed two 1994 convictions, one for Use/Under the Influence of a Controlled Substance, and the other for Forgery.

Petitioner was 23 years old at the time of the convictions. At the time he was in a bad relationship which led to problems with alcohol. The Department has no reason to believe that Petitioner has had any subsequent criminal convictions or any other civil or administrative judgments entered against him since the convictions listed above. Petitioner currently has a real estate salesperson's license in Utah. Petitioner was employed as a truck driver in Utah and was subject to random drug testing. There were no positive tests.

VIOLATIONS: Petitioner has been convicted of a crime of forgery and/or a crime of moral turpitude or any other like offense, in violation of A.R.S. § 32-2153(B)(2). He has been guilty of conduct that constitutes fraud or dishonest dealings, in violation of A.R.S. § 32-2153(B)(5). Petitioner's behavior that led up to the 1994 conviction did not demonstrate honesty, truthfulness and good character, as required in A.R.S. § 32-2153(B)(7). Petitioner has violated California laws that involve forgery, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

- a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.
- b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

Petitioner shall post a surety bond in the amount of \$2,500.

#### 01A-038

**Lynda M. Putney aka Lynda M. Abitzsch  
Scottsdale**

DATE OF ORDER: January 31, 2002

FINDINGS OF FACT: Putney is currently and was at all times material herein actively licensed as a real estate salesperson employed by Charles

*Continued on page 8*

*Continued from page 7*

F. McClean and Jancy Realty & Investments, Inc., dba Century 21-Metro Company. Her license will expire May 31, 2003.

In September 2000, Wendi Owen executed a residential listing agreement with C21-Metro through Putney for the sale of property located in Phoenix. In October 2000, Owen asked Putney to cancel the listing. Putney represents that Owen indicated to her that Owen was taking the property off the market. Putney consented to the cancellation.

Putney failed to cancel the advertising for the property in Homes Illustrated magazine. A photo of the property appeared without an address in several issues of the magazine through January 2001. Unbeknownst to Putney, Owen had listed the property with another real estate agent. According to Owen, Putney informed acquaintances who were inquiring about the property on January 4 and January 6, 2001, that the property was off the market and was no longer available and/or sold.

Putney sates she was not aware that she could not advertise property her company no longer listed. Putney confirmed that, based on her understanding, she told a caller on January 4, 2001, that the property was no longer on the market. Putney denied telling a caller on January 6, 2001, that the property was sold. Upon notification by her broker, Putney contacted Homes Illustrated to immediately stop the advertisement.

**VIOLATIONS:** Putney's failure to ascertain the actual current listing information constitutes negligence pursuant to A.A.C. R4-28-1101(C), in violation of A.R.S. § 32-2153(A)(22). Her failure to expeditiously perform all acts required by the holding of a license, pursuant to A.A.C. R4-28-1101(C), constitutes a violation of A.R.S. § 32-2153(A)(3).

**DISPOSITION:** Putney to pay a civil penalty in the amount of \$2,000. Putney to attend 12 hours of approved continuing education classes in the categories of Commissioner's Standards, Contract Law and Real Estate Legal Issues.

#### **01A-160**

**Daniel G. Morgan  
Scottsdale**

**DATE OF ORDER:** January 31, 2002

**FINDINGS OF FACT:** In his October 2001 application for a real estate salesperson's license, Petitioner disclosed a 1995 felony conviction for assault with a deadly weapon, not a firearm, with great bodily injury likely and a 1994 DUI conviction.

In mitigation, Petitioner turned himself in to the police on the assault conviction. He was young at the time of the convictions. He states he has been sober for the past six years. The Department has no reason to believe that Petitioner has had any criminal convictions or any other civil or administrative judgments entered against him since the above convictions.

**VIOLATIONS:** Petitioner has been convicted of a felony in violation of A.R.S. § 32-2153(B)(2). Petitioner's behavior that led up to his convictions did not demonstrate honesty, truthfulness and good character as required by A.R.S. § 32-2153(B)(7). Petitioner has violated California

laws that involve violence against another person, in violation of A.R.S. § 32-2153(B)(10). **DISPOSITION:** The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

#### **01A-130**

**Jennifer Theresa Barr, formerly known as Jennifer Dailey  
Scottsdale**

**DATE OF ORDER:** January 31, 2002

**FINDINGS OF FACT:** In her August 30, 1999 application for a real estate salesperson's license, Respondent failed to disclose a November 1991 judgment in Washoe, Nevada, for Conspiracy to Utter a Forged Instrument, a gross misdemeanor.

**VIOLATIONS:** Respondent procured a license for herself by filing an application which was false or misleading in violation of A.R.S. § 32-2153(B)(1). Her conduct does not show she is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-2153(B)(7).

**DISPOSITION:** Respondent's real estate salesperson's license is suspended for 90 days to begin upon entry of this Order. Respondent to pay a civil penalty in the amount of \$1,000. Respondent to attend 12 hours of approved continuing education classes in any of the categories of Commissioner's Standards, Agency Law, Contract Law or Real Estate Legal Issues.

#### **01A-143**

**Angelica Maria Villareal  
Douglas**

**DATE OF ORDER:** January 31, 2002

**FINDINGS OF FACT:** In her October 2001 application for a real estate salesperson's license, Petitioner disclosed a 2000 theft conviction in California.

**VIOLATIONS:** Petitioner has been convicted of a crime of theft and/or a crime of moral turpitude or any other like offense in violation of A.R.S. § 32-2153(B)(2). Petitioner's behavior that led up to her conviction did not demonstrate that she is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-

2153(B)(7). Petitioner has violated California laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).

**DISPOSITION:** The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

Petitioner shall post a surety bond in the amount of \$2,500.

#### **01A-009**

**Linda Anne Recko  
Scottsdale**

**DATE OF ORDER:** February 6, 2002

**FINDINGS OF FACT:** In her November 2001 application for a real estate salesperson's license, Petitioner disclosed three shoplifting charges in California that were reduced to trespassing convictions. Petitioner represented that the deaths of her father, brother and sister led to alcohol addiction. She voluntarily entered and successfully completed an outpatient alcohol counseling program at the Newport Beach (Calif.) Rehab Center. She represented that she has been sober for six years.

The Department has no reason to believe that Petitioner has had any criminal convictions or any other civil or administrative judgments entered against her since the above convictions. **VIOLATIONS:** Petitioner's behavior that led to her convictions did not demonstrate that she is a person of honesty, truthfulness and good character as required by A.R.S. § 32-2153(B)(7). Petitioner has violated California laws that involve theft, in violation of A.R.S. § 32-2153(B)(10). **DISPOSITION:** The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

a. Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

b. Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

c. Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his



services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

d. Prior to issuance of the provisional license, Petitioner shall submit to the Compliance Officer, for pre-approval, the name of a person selected to function as a sobriety monitor.

e. Petitioner shall enter into a contract with the sobriety monitor for her attendance at Alcoholics Anonymous meetings with a minimum attendance of one meeting per week. The sobriety monitor shall be responsible for reporting any breach of the sobriety contract to the Compliance Officer and may be periodically called upon by the Compliance Officer to report on Petitioner's attendance at AA meetings and her behavior or activities.

Petitioner shall post a surety bond in the amount of \$2,500.

#### 01A-025

##### **Sivage-Thomas Homes of Arizona, Inc. Fountain Hills**

DATE OF ORDER: February 7, 2002

FINDINGS OF FACT: In May 2001, a Special Order of Exemption was issued to Respondent authorizing the conditional sale of lots 349-544 in Parque Verde Unit in El Mirage (the Development).

On November 9, 2001, an Arizona Subdivision Public Report was issued to Respondent for lots 349-358, 376-385, 387, 388-449, 450-480, 482-492 and 517-522 in the Development. The Public report did not include all lots included in the exemption; did not include lot #386; and the remainder of the lots were to be included in a later application for an amended public report.

On January 10, 2002, Respondent became aware of a lot closing on December 13, 2001, on lot #386 in the Development which was not included in the public report and without first obtaining an amended public report authorizing the sale.

Respondents state that:

A. At the time the sale and closing of escrow on lot #386 occurred, due to an internal procedural error they mistakenly relied on the Health Certificate issued by Maricopa County instead of the public report as their approval to sell and close escrow.

B. They intended at all times to comply with all applicable laws, regulations and rules pertaining to selling lots in the Development and believed that they were in full compliance until their internal audit disclosed their clerical error in not including lot #386 in an amended public report; and

C. Upon learning that the sale of the lot was not included in the public report, Respondents immediately brought the fact to the Department's attention and voluntarily discontinued all further sales of lots not included in the public report.

D. After notification to the Department of these unauthorized sales, Respondents immediately began the process to amend and has prior to the date of this Order submitted to the Department an amendment to the public report to include, without limitation, lot #386; and

E. They have cooperated fully with the Department in reaching an expeditious resolution of this matter.

VIOLATIONS: Respondents failed to apply for and secure an amended public report covering lot #386 in the Development prior to its sale in violation of A.R.S. §§ 32-2181(A), 32-2183(F), 32-2184(A) and A.A.C. R4-28-B1203.

DISPOSITION: Respondents to pay a civil penalty in the amount of \$1,000. Respondent shall secure an amended public report from the Department covering, in part, lot #386, and any additional lots prior to further sale of lots not specifically authorized in the existing public report.

Respondents shall offer written notice of rescission to the purchaser of lot #386.

#### 01A-008

##### **Charlotte L. Wester, formerly known as Charlotte L. Sandquist Queen Creek**

DATE OF ORDER: February 7, 2002

FINDINGS OF FACT: In her November 2001 application for a real estate salesperson's license, Petitioner disclosed a 1994 conviction in Mesa for driving on a suspended license and a 1995 conviction in Mesa for shoplifting.

Petitioner has held a sales license with the Office of Manufactured Housing since October 20, 2000, without disciplinary action. The Department has no reason to believe that Petitioner has any criminal convictions or any other civil or administrative judgments entered against her since the above referenced convictions.

VIOLATIONS: Petitioner has been convicted of a crime of moral turpitude or any other like offense, in violation of A.R.S. § 32-2153(B)(2). Petitioner's behavior that led to her convictions did not demonstrate that she is a person of honesty, truthfulness and good character, as required by A.R.S. § 32-2153(B)(7). Petitioner violated the terms of a criminal or administrative order, decree or sentence, in violation of A.R.S. § 32-2153(B)(9). Petitioner violated Arizona laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

Petitioner shall post a surety bond in the amount of \$2,500.

#### 02A-001

##### **Tracey Allison Wands, formerly known as**

##### **Tracey Allison Young and Tracey Allison Houghton Heber**

DATE OF ORDER: February 20, 2002

FINDINGS OF FACT: In her September 2001 application for a real estate salesperson's license, Petitioner disclosed a 1981 misdemeanor conviction in North Carolina for DUI, a 1982 misdemeanor conviction in North Carolina for possession of marijuana and a 1994 felony conviction in Colorado for usage of a controlled substance.

Petitioner represented that she completed drug treatment in June 1995 and has remained drug-free for seven years. The Department has no reason to believe that Petitioner has any criminal convictions or any other civil or administrative judgments entered against her since the above convictions.

VIOLATIONS: Petitioner's behavior that led to her convictions did not demonstrate that she is a person of honesty, truthfulness and good character as required by A.R.S. § 32-2153(B)(7).

DISPOSITION: The Commissioner shall issue Petitioner a provisional real estate salesperson's license effective upon entry of this Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive licensure:

Prior to Petitioner's license activation, each designated broker shall file with the Compliance Officer a signed statement certifying that the broker has received a copy of this Order and agrees to act as Petitioner's practice monitor. The broker shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload as well as the quality of his services and client relationships. The practice monitor shall be responsible for reporting any behavior or conduct that violates real estate statutes or Commissioner's Rules.

Petitioner shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken under a valid prescription and orders of a medical doctor.

Petitioner shall submit to body fluid tests randomly drawn, not exceeding two per month, at the request of the Department's Compliance Officer.

#### 01A-128

##### **Gryon J. Bradley Scottsdale**

DATE OF ORDER: February 20, 2002

FINDINGS OF FACT: In his January 2000 application for a real estate salesperson's license, Respondent failed to disclose a 1996 conviction in West Phoenix Justice Court for fraud and false statements, a class 1 misdemeanor.

VIOLATIONS: Respondent's failure to disclose the conviction constitutes procuring a license by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). Respondent made substantial misrepresentations within the meaning of A.R.S. § 32-2153(B)(3). He is guilty of fraud or dishonest dealings as described in A.R.S. § 32-2153(B)(5). His conduct does not show that he is a person of honesty, truthfulness or good character within the meaning of A.R.S. § 32-

2153(B)(7). Respondent violated a federal or state law, regulation or rule that relates to real estate or securities, or that involves forgery, theft, extortion, fraud, substantial misrepresentation, dishonest dealings or violence against another person as described in A.R.S. § 32-2153(B)(10).

DISPOSITION: Respondent's real estate salesperson's license shall be suspended for 90 days beginning upon entry of this Order.

Respondent to pay a civil penalty in the amount of \$1,000 and attend 12 hours of approved continuing education classes in the categories of Commissioner's Standards, Agency Law, Contract Law and Real Estate Legal Issues.

The Department shall issue Respondent a two-year provisional real estate salesperson's license upon entry of this Order. Respondent shall post a surety bond in the amount of \$2,500.

#### 01A-034

**Greenfield Land Development, LLC, Gilbert; TGC Development, Inc., Bellemont; Lonnie McCleve, Gilbert; Audra Campbell, Bellemont; and Mason and Carrie Lundell, Bellemont**

DATE OF ORDER: March 14, 2002

FINDINGS OF FACT: On April 12, 2001, Greenfield Land Development, LLC (Greenfield), by Lonnie McCleve, the Managing Member of Greenfield, submitted a Notice to Take Lot Reservations to the Department for Flagstaff Meadows Unit 1 Subdivision (the Development) which was approved by the Department the same day.

Despite Greenfield's failure to secure the required public report or an exemption from the Department for the Development, Greenfield sold and closed escrow on five lots as follows:

- A. November 13, 2001, lot 7, to Timothy and Audra Campbell.
- B. December 6, 2001, lot 79, to Mason and Carrie Lundell.
- C. December 28, 2001, lot 84, to TGC Development, Inc.
- D. December 28, 2001, lot 93, to TGC.
- E. December 28, 2001, lot 13, to TGC.

On February 4, 2002, Greenfield submitted an application to the Department for a public report for lots 1-133 in the Development.

The Campbells, relatives of McCleve, acquired lot 7 without any payment to Greenfield for the purpose of building a personal residence.

The Lundells, relatives of McCleve, acquired lot 79 without any payment to Greenfield for the purpose of building a personal residence.

TGC, owned by Tim Campbell and Mason Lundell, relatives of McCleve, acquired lots 13, 84 and 93 without any payment to Greenfield for the purpose of building and selling homes on the lots.

During the Department's administrative review of Greenfield's application, it was noted that the title report reflected that lots 7, 13, 79, 84 and 93 were not vested in Greenfield. The Department learned of Greenfield's sales of the five lots from Greenfield in response to the Department's Deficiency Notice for the Administrative Completeness Review.

On February 15, 2002, Respondents submitted letters to the Department dated February 14, 2002, from each of the purchasers of the five lots referenced above whereby all of the purchasers voluntarily, and in full cooperation with the Department, agreed that they would not market, sell or in any way transfer the lots and any other lots in the Development until a public report for the Development has been issued by the Department.

VIOLATIONS: Respondents are a "developer" within the meaning of A.R.S. § 32-2101(21). The Development is a "subdivision" within the meaning of A.R.S. § 32-2101(54). Respondents are a "subdivider" within the meaning of A.R.S. § 32-2101(53).

The sales by Greenfield were not exempt from the public report requirements pursuant to A.R.S. §§ 32-2181.01 or 32-2101.02.

Greenfield's sale of the five lots without obtaining a public report, and failure to furnish each prospective purchaser with a copy of the public report are violations of A.R.S. § 32-2183(A) and (F).

DISPOSITION: Greenfield shall cease and desist from selling, offering for sale or transferring any lots in the Development until he demonstrates compliance in full with this Consent Order and complies with all applicable Arizona laws and rules.

The Campbells, Lundells and TPC shall cease and desist from selling, offering for sale or transferring any of their respective lots until Greenfield demonstrates compliance in full with this Consent Order and complies with all applicable Arizona laws and rules.

Greenfield shall obtain a public report from the Department covering, in part, the five lots already sold and all other lots in the Development before offering lots for sale and selling any lots in the Development.

Greenfield, TGC, Campbells and Lundells shall all join as applicants in the Application.

Respondent to pay a civil penalty in the amount of \$1,000. Greenfield shall comply with all county and/or city subdivision requirements for the Development, including paying all costs required by the county and/or city for infrastructure improvements for the Development.

McCleve shall attend nine hours of approved continuing education classes in any of the categories of Commissioner's Rules and Real Estate Legal Issues primarily focusing on subdivision law.

#### 02A-011

**Anna Marie Socenza  
Glendale**

DATE OF ORDER: March 14, 2002

FINDINGS OF FACT: In her December 2001 application for a real estate salesperson's license, Petitioner disclosed a 1997 conviction in Peoria Justice Court for shoplifting. In mitigation, it is noted that Petitioner is a registered nurse in Arizona. She is sincerely remorseful and regrets her decision that resulted in the conviction.

The Department has no reason to believe that Petitioner has any criminal convictions or any other civil or administrative judgments entered against her since the above referenced convictions.

VIOLATIONS: Petitioner has been convicted of a crime of theft and a crime of moral turpitude or any other like offense, in violation of A.R.S. § 32-2153(B)(2). The conduct that led to her conviction did not demonstrate that she is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). Petitioner has violated Arizona laws that involve theft, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license effective upon entry of this order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

Within 10 days of the entry of this Order, or prior to or concurrent with hiring and submitting any license change form and fee to the Department, each designated broker desiring to employ Petitioner shall submit a signed statement to the Department's Compliance Officer. The statement shall certify that the broker has received and read a copy of this Order, agrees to act as Petitioner's practice monitor, or appoints an associate broker who qualifies under the terms hereof, and agrees to comply with the following requirements:

a. The proposed practice monitor may not have been a party to any prior disciplinary action by the Department.

b. The proposed practice monitor may not be an affiliate as defined in A.R.S. § 32-2101(3), or a business associate, employee, employer, manager, partner, member, owner, co-owner, stockholder, director or officer in any business enterprise with Petitioner, and may not be a relative of, or have any other relationship with Petitioner that may create, or create the appearance of, a conflict of interest or bias.

c. An associate broker may act as a practice monitor only if the associate broker is employed at the same location as Petitioner, has been appointed by the designated broker with full written authority under A.R.S. §§ 32-2151.01(G) and 32-2127, and has agreed in writing to act as practice monitor and comply with the requirements set forth herein.

d. The proposed practice monitor is subject to the review and written approval of the Compliance Officer. This written approval may be withdrawn in the sole discretion of the Compliance Officer at any time upon written notice from the Compliance Officer to Petitioner and the practice monitor.

e. The practice monitor shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload, as well as the quality of Petitioner's services and client relationships.

f. The practice monitor shall immediately submit a written report to the Compliance Officer when the practice monitor becomes aware of any behavior or conduct in which Petitioner has engaged that violates real estate statutes or rules.

g. If the practice monitor is an associate broker, the designated broker shall sign and date all reports required under this Order, noting that the broker has accepted and approved the associate broker's report.

h. No practice monitor shall be required if Petitioner places Petitioner's license on inactive

status, or allows the license to expire; however, Petitioner's license may not be activated until a new practice monitor complies with the terms herein.

i. In the event Petitioner changes employment, Petitioner shall immediately notify the Compliance Officer and obtain a new practice monitor who qualifies under the terms and conditions herein. The new practice monitor must qualify and be approved by the Compliance Officer prior to Petitioner's hire by the new employing broker.

j. In the event Petitioner's practice monitor is no longer eligible to act as such, or ceases to perform the duties required under the terms of this Order, or there is a new designated broker for Petitioner's existing employer, Petitioner, Petitioner's practice monitor and/or Petitioner's designated broker shall immediately notify the Compliance Officer. Unless Petitioner obtains a new practice monitor who qualifies and is approved under the terms and conditions hereof, termination of Petitioner's employment shall be required within 72 hours of the time Petitioner loses the practice monitor.

k. In the event Petitioner's license becomes inactive or Petitioner fails to obtain a new practice monitor, Petitioner shall immediately cease and desist from engaging in any activity authorized by Arizona Revised Statutes, Title 32, Chapter 20, and shall notify the Compliance Officer that Petitioner's license is inactive. Petitioner shall obtain a new practice monitor prior to reactivating Petitioner's license.

l. The practice monitor requirement shall be stayed during periods of inactive licensure or expiration of license.

During the term of this provisional license, including any interim periods of inactive licensure, Petitioner is prohibited from being a signatory on, or having access to or authority over, any real estate broker's trust account or any other account which contains client funds.

Petitioner shall post a surety bond in the amount of \$2,500.

## 02A-019

**William S. Karlage**  
**Tucson**

DATE OF ORDER: March 14, 2002

FINDINGS OF FACT: In his December 2001 application for a real estate salesperson's license, Petitioner disclosed six criminal convictions; contributing to the delinquency of minors in Pima County; disorderly conduct in a public establishment in Flagstaff; DUI in Flagstaff; disorderly conduct in Flagstaff; "general offense, a petty offense," in Flagstaff, and two separate occasions for dog at large.

In mitigation, Petitioner has been a member of the Arizona National Guard since 1997 and was activated to full-time duty and sent to Kosovo as a peacekeeper with the Airborne Rangers. Currently, he is a student at the Officer Candidate School. He will graduate in August 2002 and will be commissioned in the U.S. Army as a 2nd Lieutenant. He currently holds a Department of Defense "secret" security clearance.

Petitioner was a high-school and college student when the convictions occurred, and he is sincerely remorseful and regrets his deci-

sions that resulted in the convictions.

The Department has no reason to believe that Petitioner has any criminal convictions or any other civil or administrative judgments entered against him since the above referenced convictions.

VIOLATIONS: Petitioner's conduct that led to the convictions did not demonstrate that he is a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7). DISPOSITION: The Commissioner shall issue Petitioner a two-year provisional real estate salesperson's license effective upon entry of this order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

Within 10 days of the entry of this Order, or prior to or concurrent with hiring and submitting any license change form and fee to the Department, each designated broker desiring to employ Petitioner shall submit a signed statement to the Department's Compliance Officer. The statement shall certify that the broker has received and read a copy of this Order, agrees to act as Petitioner's practice monitor, or appoints an associate broker who qualifies under the terms hereof, and agrees to comply with the following requirements:

a. The proposed practice monitor may not have been a party to any prior disciplinary action by the Department.

b. The proposed practice monitor may not be an affiliate as defined in A.R.S. § 32-2101(3), or a business associate, employee, employer, manager, partner, member, owner, co-owner, stockholder, director or officer in any business enterprise with Petitioner, and may not be a relative of, or have any other relationship with Petitioner that may create, or create the appearance of, a conflict of interest or bias.

c. An associate broker may act as a practice monitor only if the associate broker is employed at the same location as Petitioner, has been appointed by the designated broker with full written authority under A.R.S. §§ 32-2151.01(G) and 32-2127, and has agreed in writing to act as practice monitor and comply with the requirements set forth herein.

d. The proposed practice monitor is subject to the review and written approval of the Compliance Officer. This written approval may be withdrawn in the sole discretion of the Compliance Officer at any time upon written notice from the Compliance Officer to Petitioner and the practice monitor.

e. The practice monitor shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload, as well as the quality of Petitioner's services and client relationships.

f. The practice monitor shall immediately submit a written report to the Compliance Officer when the practice monitor becomes aware of any behavior or conduct in which Petitioner has engaged that violates real estate statutes or rules.

g. If the practice monitor is an associate broker, the designated broker shall sign and date all reports required under this Order, noting that the broker has accepted and approved the associate broker's report.

h. No practice monitor shall be required if Peti-

tioner places Petitioner's license on inactive status, or allows the license to expire; however, Petitioner's license may not be activated until a new practice monitor complies with the terms herein.

i. In the event Petitioner changes employment, Petitioner shall immediately notify the Compliance Officer and obtain a new practice monitor who qualifies under the terms and conditions herein. The new practice monitor must qualify and be approved by the Compliance Officer prior to Petitioner's hire by the new employing broker.

j. In the event Petitioner's practice monitor is no longer eligible to act as such, or ceases to perform the duties required under the terms of this Order, or there is a new designated broker for Petitioner's existing employer, Petitioner, Petitioner's practice monitor and/or Petitioner's designated broker shall immediately notify the Compliance Officer. Unless Petitioner obtains a new practice monitor who qualifies and is approved under the terms and conditions hereof, termination of Petitioner's employment shall be required within 72 hours of the time Petitioner loses the practice monitor.

k. In the event Petitioner's license becomes inactive or Petitioner fails to obtain a new practice monitor, Petitioner shall immediately cease and desist from engaging in any activity authorized by Arizona Revised Statutes, Title 32, Chapter 20, and shall notify the Compliance Officer that Petitioner's license is inactive. Petitioner shall obtain a new practice monitor prior to reactivating Petitioner's license.

l. The practice monitor requirement shall be stayed during periods of inactive licensure or expiration of license.

Effective upon entry of this order, Petitioner shall also comply with the following terms:

a. Petitioner shall completely abstain from the use of any and all alcohol, illegal drugs or controlled substances unless taken under a valid prescription and order of a medical doctor.

b. Before traveling out of town, Petitioner shall notify the Compliance Officer in writing of the date and time he intends to leave, his destination, at least one local phone number where he may be reached, and the date and time he expects to return.

c. Petitioner shall comply with all requests for breath, blood, urine or other testing by any peace officer.

d. Petitioner shall submit to body fluid tests and/or breath tests, randomly drawn, at the request of the Compliance Officer.

## 02A-010

**Gary Chase**  
**Peoria**

DATE OF ORDER: March 15, 2002

FINDINGS OF FACT: In his November 2001 application for renewal of his real estate salesperson's license, Petitioner disclosed a 2000 conviction in Maricopa County Superior Court for endangerment, and a 2001 conviction in Peoria Justice Court for criminal damage.

In mitigation, it is noted that after Petitioner completed court-ordered community service hours, Petitioner continued to volunteer at the V.A. Thunderbird Hospital. He has

completed anger management classes as Arizona Behavioral Counseling and a 24-week outpatient domestic violence program at Faith House.

He is sincerely remorseful and regrets his decision that resulted in the convictions.

The Department has no reason to believe that Petitioner has any criminal convictions or any other civil or administrative judgments entered against him since the above referenced convictions.

**VIOLATIONS:** Petitioner disregarded or violated the provisions of Arizona Revised Statutes, Title 32, Chapter 20 and the Commissioner's Rules in violation of A.R.S. § 32-2153(A)(3). The behavior that led to the convictions did not demonstrate that he was a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(7).

Petitioner violated Arizona laws that involve violence against another person, in violation of A.R.S. § 32-2153(B)(10). He failed to notify the Commissioner of his convictions within 10 days as required by A.A.C. R4-28-301(F).

**DISPOSITION:** The Department shall issue Petitioner a two-year provisional real estate salesperson's license effective upon entry of this Consent Order. Petitioner shall comply with the following terms and conditions during all periods of active and inactive status.

Petitioner to pay a civil penalty in the amount of \$1,000.

Within 10 days of the entry of this Order, or prior to or concurrent with hiring and submitting any license change form and fee to the Department, each designated broker desiring to employ Petitioner shall submit a signed statement to the Department's Compliance Officer. The statement shall certify that the broker has received and read a copy of this Order, agrees to act as Petitioner's practice monitor, or appoints an associate broker who qualifies under the terms hereof, and agrees to comply with the following requirements:

a. The proposed practice monitor may not have been a party to any prior disciplinary action by the Department.

b. The proposed practice monitor may not be an affiliate as defined in A.R.S. § 32-2101(3), or a business associate, employee, employer, manager, partner, member, owner, co-owner, stockholder, director or officer in any business enterprise with Petitioner, and may not be a relative of, or have any other relationship with Petitioner that may create, or create the appearance of, a conflict of interest or bias.

c. An associate broker may act as a practice monitor only if the associate broker is employed at the same location as Petitioner, has been appointed by the designated broker with full written authority under A.R.S. §§ 32-2151.01(G) and 32-2127, and has agreed in writing to act as practice monitor and comply with the requirements set forth herein.

d. The proposed practice monitor is subject to the review and written approval of the Compliance Officer. This written approval may be withdrawn in the sole discretion of the Compliance Officer at any time upon written notice from the Compliance Officer to Petitioner and the practice monitor.

e. The practice monitor shall submit quarterly written reports to the Compliance Officer that attest to Petitioner's workload, as well as the quality of Petitioner's services and client relationships.

f. The practice monitor shall immediately submit a written report to the Compliance Officer when the practice monitor becomes aware of any behavior or conduct in which Petitioner has engaged that violates real estate statutes or rules.

g. If the practice monitor is an associate broker, the designated broker shall sign and date all reports required under this Order, noting that the broker has accepted and approved the associate broker's report.

h. No practice monitor shall be required if Petitioner places Petitioner's license on inactive status, or allows the license to expire; however, Petitioner's license may not be activated until a new practice monitor complies with the terms herein.

i. In the event Petitioner changes employment, Petitioner shall immediately notify the Compliance Officer and obtain a new practice monitor who qualifies under the terms and conditions herein. The new practice monitor must qualify and be approved by the Compliance Officer prior to Petitioner's hire by the new employing broker.

j. In the event Petitioner's practice monitor is no longer eligible to act as such, or ceases to perform the duties required under the terms of this Order, or there is a new designated broker for Petitioner's existing employer, Petitioner, Petitioner's practice monitor and/or Petitioner's designated broker shall immediately notify the Compliance Officer. Unless Petitioner obtains a new practice monitor who qualifies and is approved under the terms and conditions hereof, termination of Petitioner's employment shall be required within 72 hours of the time Petitioner loses the practice monitor.

k. In the event Petitioner's license becomes inactive or Petitioner fails to obtain a new practice monitor, Petitioner shall immediately cease and desist from engaging in any activity authorized by Arizona Revised Statutes, Title 32, Chapter 20, and shall notify the Compliance Officer that Petitioner's license is inactive. Petitioner shall obtain a new practice monitor prior to reactivating Petitioner's license.

l. The practice monitor requirement shall be stayed during periods of inactive licensure or expiration of license.

In the event Petitioner discontinues active employment as a real estate licensee in the state of Arizona, he shall immediately notify the Compliance Officer and his practice monitor, who shall submit the proper form to the Department to place Petitioner's license on inactive status.

#### 01A-104

**Marcus Walker**

**Douglas**

DATE OF ORDER: March 29, 2002

**FINDINGS OF FACT:** Respondent was employed as the designated broker by Everett J. Jones Real Estate, Inc., a corporate entity licensed by the Department.

Respondent advised the Department on March 23, 2001, that:

1. While conducting a year-end audit for the year 2000 of all the Corporation's property management accounts, he could not reconcile account balances with bank statements;
2. After an extensive discovery process, Respondent determined that the property management accounts were short by a total of \$4,916.17;
3. The full amount of the shortage was deposited into the property management account on March 15, 2001; and
4. This shortage would have been discovered in a timely manner had Respondent followed the proper procedure of reconciling these accounts on a monthly basis.

Respondent informed the Department that:

1. He did not adhere to the applicable law by failing to reconcile the accounts on a monthly basis for the entire year of 2000;
2. The monthly reconciliations were delayed, in part, because of the installation of a new property management computer software program in January 2000 and the resulting software's complexity and related problems, as well as missing deposits and deposit receipt book; and,
3. He realizes the seriousness of this problem, regrets his actions in discharging his duties

*Continued on page 20*

## Recovery fund pays \$83,375 to victims of swindle

by Susan B. Lagerman

In an order proposed by the Department of Real Estate, Superior Court Judge Christopher Browning has awarded \$83,375.45 to be paid from the Arizona Real Estate Recovery Fund to ten people who were swindled by Tucson real estate broker Debra Ramirez. Ramirez, who was the desig-

nated broker for Debbie's Rentals & Sales, Inc., misappropriated rental income and deposits from numerous clients in the Tucson area.

The Department first contacted Ramirez in 1998, after receiving complaints of large shortages in her trust account. An audit based on complainants documents, incomplete bank

and other records obtained from Ramirez shows that she may have skimmed \$150,000 or more from property manager. On December 21, 1998, a Consent Order was issued revoking Ramirez's broker's license and assessing an \$8,000 civil penalty. Days later, the Department received its first notice

*Continued on page 15*

## Rule changes

*Continued from page 1*

3. "Closing" means the final steps of a real estate transaction, such as the when the consideration is paid, the mortgage is secured, or the deed is delivered or placed in escrow.

(3. through 8. renumbered as 4. through 9. without change.)

10. "Immediate family" means the licensee's spouse, and the siblings, parents, grandparents, children and grandchildren of the licensee or spouse. (9. through 11. renumbered as 11. through 13. without change.)

### Article 7. Compensation

R4-28-701. Compensation Sharing Disclosure

A real estate broker shall disclose to all the parties in the transaction, in writing before ~~close of escrow~~ closing, the name of each employing broker who represents a party to the transaction and who will receive receiving compensation from the transaction.

### Article 8. Documents

R4-28-802. Conveyance Documents

A. Upon execution of any transaction document ~~prescribed pursuant to A.R.S. Title 32, Chapter 20~~, a salesperson or broker shall, as soon as practical, deliver a legible copy of the signed document and final agreement to each party signing the document.

B. ~~In addition to any other obligation imposed by law or contract during the term of a listing agreement~~, During the term of a listing agreement, a salesperson or broker shall promptly submit all offers to purchase or lease the listed property to the client. Upon receiving permission of the seller or lessor, a salesperson or broker acting on behalf of a seller or lessor is permitted to disclose to all prospective buyers or their agents the existence and terms of any additional offers on the listed property. The salesperson or broker shall submit all offers until the sale or lease is final ~~or close of escrow~~ and is not released from this duty by the client's acceptance of an offer unless the client instructs the salesperson or broker to cease submitting offers or unless otherwise provided in the listing agreement, lease or purchase contract. The salesperson or broker may voluntarily advise the seller or lessor of offers notwithstanding any limitations con-

tained in the listing agreement and may submit offers after the listing agreement has terminated.

C. No change

### Article 11. Professional Conduct

R4-28-1101. Duties to Client

A. through D. No change.

E. A salesperson or broker shall not act ~~as a principal~~, directly or indirectly, in a transaction without informing the other parties in the transaction, in writing and before any binding agreement, that the salesperson or broker has a present, prospective or contemplated interest or conflict in the transaction, including that the:

1. Salesperson or broker has a license and is acting as a principal.

2. Purchaser or seller is a member of the licensee's or designated broker's immediate family.

3. Purchaser or seller is the licensee's employing broker, owns or is employed by the licensee's employing broker.

4. Salesperson or broker may have a financial interest in the transaction in addition to the receipt of compensation for the salesperson's or broker's real estate related services.

F. A licensee shall not accept compensation from or represent both parties to a transaction without the prior written consent of both parties.

G. A licensee shall not accept any compensation, ~~rebates, or profit for transactions made on behalf of a client~~ including rebates or other consideration, directly or indirectly, for any goods or services provided to a person that are related to or resulting from a current or prospective real estate transaction, without the that person's prior written consent or acknowledgement of the client. This requirement does not apply to compensation paid to a real estate broker by a real estate broker who represents a party in the transaction.

H. The services that a licensee provides to clients and customers shall conform to the standards of practice and competence that are reasonably expected in the specific real estate discipline in which the licensee engages. A licensee shall not undertake to provide specialized professional services concerning a type of property or service that is outside the licensee's field of competence unless the licensee engages the assistance of a person who is competent on such type of property or service, or unless the licensee's lack of expertise is first disclosed to the client in writing.

I. An agent does not have the obligation to have expertise in subject areas other than those required by the holding of a license. However, a licensee shall be obligated to exercise reasonable care in obtaining and communicating information that is material to the client's interests and relevant to the contemplated transaction.

J. A licensee shall not:

a. Permit occupancy in a person's real property to a third party without written authorization by the person.

b. Deliver possession of a property prior to the closing unless expressly so instructed by the owner of the interest being transferred.

K. A licensee shall recommend to a client that the client seek appropriate counsel regarding the risks of pre- or post-possession of the property.

### R4-28-1103. Broker Supervision and Control

A. The employing and designated brokers shall exercise reasonable supervision and control over the activities of real estate licensees and others in the employ of the broker. Reasonable supervision and control includes, as appropriate, the establishment and enforcement of written policies, rules, procedures and systems to review, oversee, inspect and manage:

1. Transactions requiring a real estate license.

2. Documents that may have a material effect upon the rights or obligations of a party to the transaction.

3. Filing, storage and maintenance of such documents.

4. The handling of trust funds.

5. Advertising and marketing by the broker and the broker's agents.

6. Familiarizing salespersons and associate brokers with the requirements of federal and state laws relating to the practice of real estate.

7. The use of employment agreements, disclosure forms and contracts.

8. The delegation of authority to others to act on behalf of the broker.

9. The use of unlicensed assistants by the agents of the broker.

B. A broker shall establish a system for monitoring compliance with the broker's policies, rules, procedures and systems. A broker may use the services of employees to assist in administering the provisions of this section but shall not relinquish overall responsibility for supervision and control of the acts of employees of the broker.

## Legal advice

*Continued from page 2*

232, 413 P.2d 291, modified on denial of rehearing, 3 Ariz.App. 358, 414 P.2d 442 (1966) (Alleged representations of legal effect by the seller to the buyer that were contradictory to the provisions of the written agreement could not form the basis of actionable fraud against the seller so as to violate the contract); *Bames v. Lopez*, 25 Ariz.App. 477, 544 P.2d 694, 697 (1976) (A definite representation as to the zoning status of the property was a representation to an existing fact, not an opinion and was thus actionable).

On the other hand, there is an "ex-

ception to the exception" which may be applicable to real estate brokers. One may argue this exception exists when it is a real estate broker who makes the misrepresentation as to a legal matter because the law allows a misrepresentation of a legal matter to support an action for misrepresentation where (1) there exists a relationship of trust and confidence between the parties, or (2) the party making the misrepresentation is found to be a person "especially skilled in the law and the party to whom the misrepresentations are made is not so skilled." See *Rhodes v. Harvey Publications, Inc.*, 131 Ariz. 267, 640 P.2d 198, 201-02 (App. 1981), appeal after remand 145 Ariz. 142, 700 P.2d 840 (App. 1981).

Thus, because a real estate broker may be deemed to be "especially skilled in the law," Arizona law may allow a non-client party to properly state a cause of action against a real estate broker if that broker makes an affirmative misrepresentation relating to a legal matter, such as a statement relating to the effect of a contractual provision. Whether the broker should ultimately be liable under such circumstances may depend upon a number of factors including the sophistication of the party harmed and the type of misrepresentation made by the broker.

*Mr. Kloberdanz is a partner in the law firm of Stoops & Kloberdanz, PLC, and is a state bar certified real estate specialist.*

## Panel formed to protect Americans in Mexican real estate deals

Governor Jane Dee Hull has appointed a task force to better protect Arizona consumers who seek to purchase real estate in Mexico.

Governor Hull established the Arizona Task Force on Mexican Real Estate in response to incidents of improper real estate practices in Sonora, Mexico, that have caused financial harm to Arizonans and undermined the investment and development potential of the area's beach resorts. The task force will issue an initial report in May.

The task force comprises a dozen experts on Mexican real estate, including attorneys, developers and appraisers, as well as representatives of the Governor's Office, the Arizona-Mexico Commission and the Arizona Department of Real Estate. Governor Hull has charged the Task Force with developing short-term consumer protection measures such as a public guide to buying real estate in Mexico, as well as recommendations for long-term regulatory changes in the Mexican real estate industry.

"Buying real estate in Mexico in-

volves some complexities that inexperienced buyers may simply be unaware of," said John Wilson, an attorney at the National Law Center for Inter-American Free Trade in Tucson and chair of the Task Force. "Mexico has a lot of beautiful properties, but you absolutely must inform yourself before you buy. The Task Force aims to help buyers do just that, as well as to educate real estate sellers on the proper way to do business."

The states of Sonora and Arizona have a long history of working together to address challenges that impede economic development for the region. This task force will look at identifying systemic changes necessary to protect buyers and facilitate investment, Governor Hull said.

"Governor López Nogales has proven by his actions that he intends to improve the real estate industry in Sonora," she said. "I am confident that we will see results this year."

The task force resulted from an agreement signed by Governor Hull and Sonora Governor Armando López No-

gales last November in Hermosillo, Sonora.

Initial members of the Arizona Task Force on Mexican Real Estate are: Ruben Alvarez, Governor Hull's Policy Advisor for Mexico; Mitch Creekmore, V.P. and Mexico Division Manager, Stewart Title Guaranty Company; John Gerard, Deputy Director of Subdivisions, Arizona Dept. of Real Estate; Bruce Greenberg, Real Estate Appraiser; Russ Knocke, Director, Arizona-Mexico Commission; Lisa Larkin, Real Estate Attorney licensed in Arizona; Alice Martin, Executive Vice-President, Arizona Association of Realtors; Art Martori, Partner, Estrella del Mar project in Mazatlan; Rick McMillan, Partner, Sonoran Spa; Vernon Penner, Real Estate Attorney licensed in Mexico; Don Prince, Deputy Director Arizona Office of Tourism; John M. Wilson, Representative of the National Law Center, and task-force chairman.

For more information, please call James Ahlers, Special Assistant for Mexico Policy, at (602) 542-1346.

## Can you pass this Property Management Q&A?

*by Ed Ricketts*

I recently customized the presentation of my Broker Management Clinic (BMC) for a group of property managers. It was a challenging group to make such a presentation to, and I early recognized I had prepared eight hours of material for a three hour class. Property managers clearly need a Broker Management Course all their own, one

that focuses solely on property management issues. Watch for one at Arizona School in the next two months.

In the process of developing the new course, I started a series of true-false questions. This turned out to be great stuff for a property management Q&A, the first of a several part series which is presented below. Of course, much of this Q&A is relevant to any

broker, not simply property managers, but my focus is on questions I get mostly from property managers.

### The Legal Use of Entities

**Q.** May a designated broker be licensed as a professional corporation (PC) or professional limited liability company (PLC)?

*Continued on next page*

# Swindle

*Continued from page 12*

of a potential claim against the Fund from Russell and Jean Olson. The Department received four additional notices of claims against Ramirez in 1999, beginning with Robert and Gay Kohl. In March 2000, the Kohls were the first to obtain judgment against Ramirez and complete all reasonable efforts to collect the judgment, without being paid.

In April 2000, the Department notified 39 identified victims that all proceedings against Ramirez to collect from the Recovery Fund would be consolidated with the Kohl case, so that all potential claims could be treated equitably and prorated, if necessary. In May 2000 at the Department's request, Judge Browning ordered consolidation and proration of all claims against Ramirez, and the Department notified all potential applicants that they had 90 days to file notice of intent to claim.

Half way through the 90-day period, Ramirez filed for bankruptcy, and all litigation was automatically stayed.

The victims later obtained an order from the bankruptcy judge lifting the stay to permit actions solely for the purpose of collecting from the Fund. A new deadline of November 20, 2000, was established.

Of the 35 additional victims who contacted the Department and received information about filing claims against the Fund, only five more filed notices.

By June 2001, ten persons had obtained judgments against Ramirez. By December 2001, nine of the ten qualifying victims had filed their applications for payment and provided sufficient evidence of covered losses that, when combined with the Kohls' covered losses, totaled \$83,375.45. All parties and counsel cooperated to minimize attorney's fees and maximize reimbursement to victims.

When the Department began investigating Ramirez in 2000, the Fund's claim limit was \$40,000 per licensee. By 2001, the Fund limits had been increased to \$30,000 per transaction and \$90,000 per licensee.

The Department filed a proposed order for Payment from the Fund, which was not contested by any party.

The Order was entered on January 28, 2002 whereafter and the Fund paid \$83,375.45 to victims as compensation for out-of-pocket losses. \$6,624.25 remains available in the Fund for future qualifying claims against Ramirez.

The Fund is available to pay out-of-pocket losses to qualifying victims who have lost money because of fraud or misappropriation by a real estate licensee in a real estate transaction. The availability of the Fund enhances the value of relying on advice and assistance of licensed real estate professionals.

Real Estate Commissioner Jerry Holt proposed legislation in 1999 to increase Fund limits when he determined that the increase was warranted due to inflation and increased property costs, and to more equitably compensate victims. Governor Jane Dee Hull signed a bill into law in April 2000 which set the new Fund limits at \$30,000 per transaction and \$90,000 per licensee.

*Ms. Lagerman is an Assistant Attorney General with the Office of the Attorney General's Consumer Protection and Advocacy Section.*

## Q&A

**A.** Unfortunately, the answer is no. In A.R.S. §32-2125(B) the law permits only salespersons and associate brokers to act as licensees "through and on behalf" of a PC or PLC licensed by the Department. I don't know of a good reason why a designated broker should be precluded from the use of the PC or PLC, but that's the way the law now reads.

On the flip side, it is not an uncommon occurrence for salespersons and associate brokers to form a regular corporation or LLC, on the advice of a CPA and/or a lawyer, and request their broker to direct their commission checks to that entity. That is equally illegal. The only two entities that may be utilized by a salesperson or associate broker are the PC and PLC. Regrettably, most CPAs and lawyers are ignorant about the special limitations of the Real Estate License Act.

**Q.** Is it legal for a separate entity, for instance a corporation, to act as a licensed branch

office?

**A.** The short answer is no. There is no provision in the law (see A.R.S. §§32-2125 and 32-2127) that permits a branch office to act as a separate entity. However, I know of instances where branch offices are incorporated as entities to benefit those who run the branch office, typically the branch manager.

**Q.** May a person be the designated broker for more than one real estate brokerage?

**A.** No. See A.R.S. §32-2125.01. Although the law does not permit a person to be a designated broker for more than one brokerage (or to be employed as any kind of real estate licensee at more than one brokerage), the law does allow a real estate licensee to be a salesperson, associate broker or designated broker for one each real estate, cemetery and membership camping brokerage simultaneously.

**Q.** May Brokerage A contract with Brokerage B for Brokerage A to conduct Brokerage B's property management?

**A.** Yes. An employing broker may con-

tract with another brokerage to perform services for that brokerage, including the performance of property management. However, full disclosure must be made to and permission received from the property owners. I believe this is a material matter that would be required to be in the property management agreement.

**Q.** Is it OK to have a corporation licensed as a brokerage, that then acts as the managing partner for a limited partnership, or does the limited partnership have to be licensed?

**A.** When the Department licenses an entity, as long as the entity remains properly licensed and acts within the legal framework of what licensed entities can do, it is legal. Acting as the managing partner for a limited partnership may be within the legal scope of activity of the licensed corporation. As long as the real estate activity of the limited partnership is conducted through the licensed corporation, and only the licensed corporation receives the real estate related compensation, there should be no problem.

*Continued on page 16*

## Q&A

*Continued from page 15*

### Scope of the Audit

**Q.** If a sole proprietor broker manages her own property, is the Department entitled to audit those records along with the records of other managed properties?

**A.** Any real estate activity conducted by the employing broker is subject to audit by the Department's auditors. However, the auditors are often not interested in auditing the handling of the broker's own properties, unless there is a related problem or complaint.

**Q.** Must a property management firm that also handles the books and grounds keeping

for several HOAs allow the Department access to audit the HOA portion of its management?

**A.** No. The Department "may examine the books and records... (that) pertain to the transfer, sale, rental, lease, use or management of real property." See A.R.S. §32-2108(A). Bookkeeping and grounds keeping for an HOA are not property management within the scope

of activities requiring a real estate broker's license.

**Q.** May the Department auditor demand access to an owner's account, into which the broker deposits rents pursuant to the terms of the property management agreement?

**A.** No. The auditor's review is generally limited to those activities and accounts under the control of the broker.

### Responsibility for Brokerage Records

**Q.** Is the designated broker personally responsible for keeping transaction and employee records for the obligatory five year period?

**A.** No. The employing broker has that responsibility. For years, the lead sentence of A.R.S. §32-2151.01 read: "The licensed designated broker shall keep records of all real estate... (and) employees." In 1997 the word "designated" was changed to read "employing." Therefore, the employing broker (the brokerage) is responsible for keeping the records, not the designated broker.

However, even when then the statute specified the designated broker as the one to keep the records, this was not enforced. It was always rec-

ognized that the brokerage, itself, was the person responsible for keeping records. There are still designated brokers, though, who believe they are personally responsible for keeping a brokerage's records for five years.

**Q.** Is the current designated broker responsible for assuring all the brokerage's records have been properly reviewed, initialed and kept for the past five years, or only for the time period that designated broker has been employed?

**A.** It would be pretty crumbly for the Department to hold the current DB responsible for the screw-ups of the prior DB, so it doesn't. Often, the auditor will not even schedule an audit until the current broker has been on the job for a year or so. Only if the current DB is aware of some infraction she could easily fix or continues an unlawful practice might the auditor ding the current broker for the sins of her predecessor.

Next month I will continue with Part II of this Property Management Q&A series.

*Edwin J. Ricketts is a broker-counselor and educator. He may be contacted at [EJRetal@fastq.com](mailto:EJRetal@fastq.com) or 602-277-4332.*

## 'Buyer Advisory' designed to educate real estate buying public

*by K. Michelle Lind*

Does a buyer in a real estate transaction know how to investigate the property being considered for purchase? Does a buyer know the questions to ask or where to go for reliable information? In an effort to address these issues, the Arizona Department of Real Estate Disclosure Law Instructor Development Workshop Committee developed the Buyer Advisory as a tool to educate buyers. The Advisory will provide buyers with a wealth of information about issues that may be important in a real estate transaction, explain why certain issues may be important and direct buyers, via hyperlink in the electronic version, to sources of additional information.

The Advisory is available on the ADRE website, [www.re.state.az.us](http://www.re.state.az.us), and the Arizona Association of Realtors® website, [www.aaronline.com](http://www.aaronline.com). A buyer may utilize the Advisory directly on one of these web sites, or the Advisory may be printed and given to the buyer, downloaded and provided to the buyer on disc, or delivered to the

buyer via email.

For organizational purposes, the Advisory is divided into three general sections: (1) common documents a buyer should review; (2) physical conditions in the property the buyer should investigate; and (3) conditions affecting the surrounding area that the buyer should investigate.

Some of the documents addressed in the Advisory include:

- **MLS Printout:** Buyers are advised that the MLS information may be incomplete or an approximation.
- **The Public Report:** The Advisory explains that the Public Report discloses a variety of material information about the property and provides a link to additional information from the ADRE.
- **Seller's Property Disclosure Statement ("SPDS"):** Buyers are cautioned to verify statements of concern and provided a link to a sample AAR SPDS form.
- **Covenants, Conditions and Restrictions ("CC&Rs"):** The Advisory

explains how a buyer agrees to be bound by the CC&Rs and provides a link to additional information.

- **Homeowners' Association ("HOA") Governing Documents:** HOA articles of incorporation, bylaws, rules and regulations, and architectural control standards are discussed and links to information on HOA's (both pro and con) in general are provided. Information on statutory HOA disclosures is also provided.
- **Title Report or Title Commitment:** The Advisory explains that the title report or commitment discloses documents that are exceptions to the title insurance (Schedule B Exceptions), which may affect the use of the property.
- **County Assessor's Records:** The Advisory discusses the kinds of information included on the county assessor's records and provides a link to these records.
- **Termites and Other Wood Destroying Organisms:** The Advisory explains that termites are com-

*Continued on next page*



monly found in Arizona homes and provides a link to the Structural Pest Control Commission for additional information.

Some of the physical property conditions addressed in the Advisory are:

- **Repairs and New Construction:** Buyers are advised to request documentation regarding work performed on the property and directed to the Registrar of Contractors for additional information. If the roof is 10 years old or older, a roof inspection by a licensed roofer is recommended.
- **Swimming Pools and Spas:** The Advisory explains that a pool or spa company inspection may be warranted and provided with a link to a partial list of pool and spa contractors. A source for barrier information for each city and county is provided along with a link to the required safety notice.
- **Square Footage:** Buyers are advised that the square footage noted in the MLS printout or the county assessor's records should not be relied upon and a link is provided for a list of appraisers and architects, who can measure the square footage of a property.
- **Sewer and On-Site Wastewater Treatment Facilities:** The Advisory explains that even if the listing or SPDS indicates that the home is connected to the city sewer, a professional should verify it. The Advisory discusses pre-transfer inspection requirements for on-site wastewater treatment facilities and provides a link to additional information from the Arizona

Department of Environmental Quality.

- **Expansive Soil:** The Advisory explains "expansive soils," provides a link to a map of expansive soils and a list of state certified professional engineers.
- **Scorpions and Other Pests:** Buyers are advised to seek the advice of a pest control company about any concerns and a link to scorpion information is provided.
- **Mold:** Mold concerns are addressed and buyers are directed to a pamphlet prepared by the Arizona Department of Health Services and website information provided by the EPA and the CDC for further information.
- **Flood Plain Status:** The Advisory explains that if the property is in a flood zone, an additional annual insurance premium may be required. The Advisory lists several sources of information to help determine if the property is in a flood hazard area or flood plain.

Some of the conditions that may affect the area surrounding the property addressed in the Advisory include:

- **Environmental Hazards:** Buyers are directed to several sources of information on environmental hazards, including a link to the Arizona Department of Environmental Quality Superfund maps.
- **Freeway Construction:** A link to the Arizona Department of Transportation maps to find the nearest future freeway routes and roads in the area slated for widening is included in the Advisory.
- **Crime Statistics:** Links to check

the crime statistics for the cities of Phoenix, Tempe, Glendale, Mesa, Scottsdale, Chandler, Gilbert and Peoria are provided, along with a list of all Arizona city links where crime statistics for other cities may be obtained.

- **Sex Offenders:** The Arizona registry and community notification program is explained and a link to the sex offender web site is provided.
- **Military and Public Airports:** The Advisory explains that the legislature has mandated the identification of areas in the immediate vicinity of military and public airports that are susceptible to a certain level of noise from aircraft. Links to the maps indicating these areas is provided.

The Advisory also summarizes other methods to obtain information about a property. Because some buyer's brokers may wish to have the buyer acknowledge receipt of the Advisory, a Buyer's Acknowledgment section and prompt for initials are included.

The Advisory should result in more informed buyers by providing valuable information and resources. A well-informed buyer will be less likely to encounter unpleasant surprises about the property after close of escrow, which benefits not only the buyer, but the seller and real estate brokers involved in the transaction as well.

*Michelle is General Counsel for the Arizona Association of Realtors® and was a member of the ADRE Disclosure Law Instructor Development Workshop committee. Visit the AAR web site at [www.aaronline.com](http://www.aaronline.com).*

## Board of Technical Registration adopts emergency home inspector certification rules

The Arizona Attorney General has approved the Board of Technical Registration emergency rules for the Home Inspector Certification Program. These rules are now in effect and will be the control over the program until the permanent rule package is finalized and adopted.

Any person offering home inspections in Arizona after May 1, 2002, must have an application for home inspector certification on file with the Board of Technical Registration prior to May 1, 2002 in order to

continue to conduct business.

### Statutes and rules

The statutes and rules can be found on the Board's web site at [www.btr.state.az.us](http://www.btr.state.az.us).

Statutes and rules may also be obtained through the Board office for a fee. Please contact the Board office at (602) 255-4053, extension 200. Home inspectors will be held responsible for adhering to all statutes and rules that are reasonably applicable to their practice. Specific statutes

applying to home inspectors are: A.R.S. §§ 32-101(B) 17, 18, 19, & 20; 32-122.02; 32-127(J); 32-144(D), and 32-145.

Specific rules applying to home inspectors are found in the emergency rule package for home inspectors on the Board's web site or are available for a fee from the Board office.

Practice standards for home inspectors, adopted by the Board of Technical Registration, are also avail-

*Continued on page 18*

# Home inspectors

*Continued from page 17*

able for downloading from the Board's web site.

## General certification requirements

All persons offering home inspections in the state must be certified by the Board or meet one of the exemptions listed in A.R.S. 32-144(D).

From May 1, 2002, until January 1, 2003, persons conducting home inspections must meet one of the exemptions or have an application for certification on file with the Board.

Persons offering inspections while their application is being processed may not call themselves "Certified Home Inspectors."

Persons awaiting a decision on their application for certification do not fall under the jurisdiction of the Board unless they violate an uncertified/unlicensed practice statute or rule. They will not be "Certified Home Inspectors" and cannot be held to practice standards until "certified" by the Board.

## Grandfathering provisions

Persons applying for certification who can present satisfactory evidence to the Board that they have performed at least 250 home inspections for compensation before January 1, 2003, and have passed the required examination within two years of application, and meet all other qualifications, may be exempted from the training requirement. These candidates must file an application and state they are applying under the provisions of Section 17 of the enabling statutes. They must provide a log of 250 inspections and copies of 5 reports they have issued.

## Qualification under the 100 inspection rule

Those persons who will not have 250 home inspections for compensation prior to January 1, 2003, but have 100, or will have 100 by January 1, 2003, must also apply for certification at this time. Persons seeking qualification under the provisions of A.A.C. R4-30-247 must show evidence of having completed 100 inspections for a fee, and must have passed the re-

quired examination within two years of filing an application. However, they will also be required to meet the education standard of 80 classroom hours covering material relating to each of the sections outlined in the Emergency Rules, from an institution that is either licensed by the appropriate post-secondary education licensing authority in its home state, has an accreditation by the Distance Education Training Council (DETC) for on-line training, or has an accreditation recognized by the United States Department of Education.

## In-training qualification

Those persons seeking in-training certification must have completed an approved course and also passed the required examination within two years of filing an application. Their application will be processed, and if they meet all requirements, they will be designated as Home Inspectors-in-Training and must then complete 100 inspections through approved training providers or Arizona Certified Home Inspectors. 10 of those 100 inspections must be conducted in the immediate presence of an Arizona Certified Home Inspector. The remainder may then be conducted under the direct supervision of an Arizona Certified Home Inspector.

## Applicable statutes

### A.R.S. § 32-144(D) states:

An individual shall not perform home inspections unless the individual is certified as a home inspector pursuant to this chapter, except that nothing in this chapter prevents:

1. A person who is licensed, certified or registered pursuant to this chapter or another chapter in this title from acting within the scope of the person's license, certification or registration.
2. A person who is employed by a governmental entity from inspecting residential structures if the inspection is within official duties and responsibilities.
3. A person from performing a home inspection if the home inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure, unless otherwise required by federal law or regulation.
4. A person who is employed as a property manager for a residential structure and whose official duties

and responsibilities include inspecting the residential structure from performing a home inspection on the structure if the person does not receive separate compensation for the inspection work."

### A.R.S. § 32-145 states:

Any person who commits any of the following acts is guilty of a class 2 misdemeanor:

1. Practices, offers to practice or by any implication holds himself out as qualified to practice architecture, assaying, engineering, geology, home inspection, landscape architecture, assaying, engineering, geology, home inspection, landscape architecture or land surveying who is not registered or certified by this chapter.
2. Advertises or displays any card, sign or other device that may indicate to the public that the person is a home inspector or a registered professional architect, assayer, engineer, geologist, landscape architect or land surveyor, or is qualified to practice as such, who is not certified or registered as provided by this chapter.
3. Assumes the title of "certified," "professional certified," "registered," "registered professional," or "professional registered" engineer, architect, geologist, assayer, landscape architect, home inspector or land surveyor, who is not certified or registered as provided by this chapter.
4. Uses a certification or certificate of registration of another, or uses an expired or revoked certification or certificate of registration.
5. Presents false evidence to the board with the intent to obtain a certification or certificate of registration.
6. Otherwise violates any provision of this chapter.

### A.R.S. § 32-101(B) provides:

17. "Home Inspection" means a visual analysis for the purposes of providing a professional opinion of the building, any reasonably accessible installed components and the operation of the building's systems, including the controls normally operated by the owner, for the following components of a residential building of four units or less:
  - (a) Heating system
  - (b) Cooling system
  - (c) Plumbing system
  - (d) Electrical system
  - (e) Structural components
  - (f) Foundation

*Continued on next page*

- (g) Roof covering
- (h) Exterior and Interior
- (i) Site aspects as they affect the building

18. "Home Inspection Report" means a written report that is prepared for compensation, that is issued after a

home inspection and that clearly describes and identifies the inspected systems, structures and components of the dwelling and any major visible defects found to be in need of immediate major repair and any recommendations for additional

evaluation by appropriate persons.  
19. "Home Inspector" means an individual who is certified pursuant to this chapter as a home inspector and who engages in the business of performing home inspections and writing home inspection reports.

## Legislation

*Continued from page 1*

- Amends A.R.S. § 32-2181.03 to clarify that lot reservations only be taken for developments located in Arizona. Provides two-year time limit for taking lot reservations.

House Bill 2006:

- Amends A.R.S. § 32-2124(J) to set a five-year time limit within which an applicant for a waiver of the national portion of the Arizona real estate license examination shall have taken the national portion in another state.
- Amends A.R.S. § 32-2153(B) to require licensees to file copies of continuing education certificates with renewal applications.
- Amends A.R.S. § 32-2136(C) to require a broker to attend a broker management clinic before becoming a designated broker unless the broker

has attended a clinic within the preceding 23 months instead of during the broker's current license period.

- Amends A.R.S. § 32-2153(A), (B) and (E) to give the Commissioner the authority to issue a "letter of concern" to a licensee who violates a statute or rule. The amendment defines "letter of concern." Defines "incompetence" (as a basis for license suspension or revocation) as a lack of basic knowledge or skill appropriate to the type of license the person holds or a failure to appreciate the probable consequences of the licensee's action or inaction."

House Bill 2007:

Each 10 years, the Legislature must vote to extend the existence of the Arizona Department of Real Estate for another 10 years. House Bill 2007 extends the existence of the Department until July 1, 2012.

House Bill 2008:

This legislation would amend A.R.S. §§ 32-2186 through 21-2193.02 to provide that applications for payment from the Real Estate Recovery Fund are filed with the Commissioner rather than with the courts.

Applicants whose claims are denied will have an opportunity to reapply to the courts. Licensees will have an opportunity to object to the Commissioner or appeal to the court before a claim is paid if the licensee believes the applicant's claim does not qualify for payment from the Fund.

The legislation will also provide that the courts continue to hear and determine proration proceedings initiated by the Department when it appears that claims will exceed the maximum amount available from the Fund. Additionally, the amendment will allow claims against inactive licensees.

## Are you part of the virus problem, or part of the solution?

Have you spread a virus lately? Odds are, you've spread the most insidious form of a computer worm (a kind of virus) and thought you were doing people a favor. The worm in question is a seemingly innocent email message. The message doesn't contain an attachment that does the damage; it's the message itself that causes the problem.

Recently the Department's webmaster received an email from a well-meaning Phoenix real estate broker. It told the story of a clerk in Maui, Hawaii, who drank a can of soda stored in the back of the store where he worked. The clerk had not washed off the top of the can, and supposedly he died within a few days because rat urine had been deposited on the top of the can and the urine contained hantavirus.

The bottom line of this 374-word email was "wash the top of soda cans before you drink from them."

According to "Urban Legends and Folklore" at <http://urbanlegends.about.com/library/blrats2.htm>, this rat urine email has been making the

rounds since 1999. An email inquiry to the Hawaii Department of Health yielded the following response from Dr. Philip Bruno, Chief of the DOH Communicable Disease Division: "The State of Hawaii Department of Health investigated this question and has shared its findings with the Centers for Disease Control and Prevention. The email is not true. There have been no known hantavirus cases in Hawaii. The email may be a hoax, or a misinterpretation of some other event."

The fact that this message acts like a worm that replicates itself and spreads across the Internet isn't clear to you yet, is it? An analysis of the message received by the Department shows that the person who originated it sent it to 21 people, one of whom forwarded it to 10 people, one of whom forwarded it to 12 people, one of whom forwarded it to nine people, one of whom forwarded it to seven people, one of whom forwarded it to four people. One of the four, the broker, forwarded it to 29 people including the Department's webmaster. There is no way to tell how many copies of this

inane message these 92 people sent out, but we can make a very conservative estimate.

If every one of the 92 people sent it to five people, then 460 copies of the message were sent. If each of the 460 people sent it to five people, then another 2,300 copies were sent. And so on. See the problem?

Mary Landsesman, on an antivirus page at <http://antivirus.about.com/library/weekly/aa102300a.htm>, writes, "By definition, a worm is a piece of malicious code that copies itself over and over again, either on the users system or, in modern times, by spreading itself through email. While the real worm relies on sophisticated coding to achieve spread, the craftily worded hoax simply relies on the user to do its dirty deed. As a result, a hoax can spread around the Internet in hours, clogging inboxes, saturating mail servers, and frustrating administrators who are charged with debunking these erroneous messages. The fact is, hoaxes have only one purpose in life and that is to spread to as many people as

*Continued on page 20*

## Virus

*Continued from page 19*

possible. Quite the same goal as most viruses, in fact.”

A relatively new hoax making the rounds alleges that WalMart is too cheap to buy American flags to fly in front of its stores, and that employees must take up a collection among themselves to pay for a flag. According to WalMart this is absolute rubbish. Each store displays a flag—either on a flag staff or in the store—purchased from the store's operating budget.

If you'd like to see a comprehensive list of hoaxes, visit Current Netlore at <http://urbanlegends.about.com/library/blxatoz.htm>.

[brary/blxatoz.htm](http://urbanlegends.about.com/library/blxatoz.htm).

You might also be interested in the Hoax Encyclopedia at <http://antivirus.about.com/library/-blenhoax.htm>. Another good source of information about hoax emails and be found on Phoenix TV Channel 3's web site. Their list of email hoaxes compiled by “3 On Your Side” is well worth reading. <http://www.azfamily.com/news/3oys/hoax.html>

Before you decide to save the world by forwarding an email you received to everyone in your address book, do some research on these web sites. Be reluctant to forward messages containing information of which you have no first-hand knowledge.

The same suggestion is true for virus warnings. The Department's webmaster receives two or three false virus warnings each month from well-meaning people. Check the McAfee virus page at <http://www.mcafee.com> or the Symantec virus page at <http://www.symantec.com> to verify that a virus is real before forwarding virus warnings you receive from others.

An exception is a warning issued by the Department. Occasionally warnings are posted on our Late-Breaking News web page and sent to subscribers to our Late-Breaking News email service. Such warnings have been carefully documented and are valid.

## Actions

*Continued from page 12*

and understands the need for stricter adherence to accounting practices to comply with the laws and Commissioner's Rules.

Respondent has admitted that while none of his clients suffered any damages because of the temporary shortage, his reliance on accounting records without validation and monthly reconciliations was a breach of his fiduciary duties to his clients and that monthly reconcil-

iation of property management accounts are now routinely undertaken and completed and have been since January 2001.

**VIOLATIONS:** Respondent failed to complete monthly property management account reconciliations in violation of A.R.S. § 32-2151(B)(2). He failed to exercise reasonable supervision and control over the activities for which a license is required in violation of A.R.S. § 32-2153(A)(21). He disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, within the meaning of A.R.S. § 32-2153(BA)(3). He failed to protect and pro-

mote the interests of his clients and fulfill his fiduciary duties to his clients in violation of A.A.C. R4-28-1101(A).

**DISPOSITION:** Respondent to pay a civil penalty in the amount of \$1,500. Respondent to attend six hours of continuing education classes in any of the categories of Commissioner's Standards, Agency Law, Contract Law or Real Estate Legal Issues. Respondent shall notify in writing each of the property management clients of the Corporation within 30 days of this order providing each client with a copy of this Consent Order.

# ARIZONA

## REAL ESTATE BULLETIN

Arizona Department of Real Estate  
2910 N 44th Street, Phoenix AZ 85018-7256